IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 929 OF 2004

Vijay Nagar Vijay
Coop. Hsg. Society Ltd. & anr. ... Appellant
VS.
Municipal Corporation of
Gr. Bombay & anr. ... Respondents

Mr. A. C. Singh for the appellant.
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

DATE: December 1, 2006

P.C.:

1. This appeal is directed against the judgment and order dated 20th September 2004 passed by the City Civil Court at Bombay rejecting the appellants' motion for injunction.

2. Appellant no.1 is a cooperative housing society of the persons who have been allotted tenements under the Prime Minister' s Grant Project (for short PMG Project) for rehabilitation of slum dwellers. Appellant no.2 is one of the members of the appellant no.1. Respondent nos. 2, 3 and 4 are the other original hutment dwellers in the same locality. There existed a number of slums at V. K. Krishnamenon Marg, Dharavi,

Mumbai. The government came up with the scheme for development of some of the slums in Dharavi under the PMG Project for rehabilitation of slum dwellers. Under the scheme several multi storied buildings were constructed by removing the slums on the government land and the occupiers of the huts in the slums were allotted tenements in the new buildings constructed on the land occupied by their huts. One such building constructed under the PMG Project bearing no. 24 is the subject matter of the present suit.

3. It appears that the building no. 24 was constructed by removing some slums and widening the existing road to 90 feet. The slum dwellers were allotted tenements therein. A cooperative society was formed by the slums dwellers to whom the tenements were allotted and that society is the appellant no.1. Appellant no.2 is one of the members of the society to whom a commercial tenement is allotted on the ground floor of the building no.24. The respondent nos. 2, 3 and 4 were also slum dwellers in the same area. They also claimed that they were entitled to the allotment of commercial tenement on the ground floor of building no.24. However, the dispute appears to be is that whether respondent nos. 2,3 and 4 were entitled to the commercial tenements on the ground floor or to the residential tenements on the upper floors. While respondent nos. 2, 3 and 4 claim that they are entitled to commercial tenements the appellant

no. 1 and the authorities appear to have offered residential tenements to them on the upper floors.

4. It appears that after construction of building no. 24 the huts of the respondent nos. 2,3 and 4 were removed by the respondent no.1, the Mumbai Municipal Corporation for the purpose of road widening. It is the case of respondent nos. 2,3 and 4 that they were given assurance by the respondent no.1 that they would be allowed to shift their huts backwards i.e., in the open space between the building no.24 and the V.K. Krishnamenon road. Letters were also issued to respondent nos. 2,3 and 4 by the respondent no.1 directing them to shift their structures backwards, that is, in the open space between building no.24 and V.K. Krishnamenon road. It appears that respondent no.2 to whom the shop has been allotted in building no.24 fears that if the respondents shift their structures in the open space between the building no. 24 and the said road his business would be affected. Similar apprehension is harboured by few other shopkeepers having shops on the ground floor. It appears that the said shopkeepers, through the appellant no.1 filed a suit bearing civil suit no. 6252 of 2001 for an injunction restraining the respondent no.1 Mumbai Municipal Corporation from permitting respondent nos. 2,3 and 4 to erect any structure in the open space and restraining the respondent nos. 2,3 and 4 from constructing any structure between building no.24 and the road.

5. The appellants took out a motion for interim injunction restraining the respondent no.1 from granting permission for building any structure and respondent nos. 2,3 and 4 from shifting their structures backwards , that is in the open space between the building no.24 and the V.K. Krishnamenon road. By the order dated 20th September 2004 the City Civil Court dismissed the appellants' motion. That order is impugned in his appeal.

6. Learned counsel for the appellant produced for inspection photograph of building no. 24 and submitted that building no. 24 abuts the V.K. Krishnamenon road and there is no open space between the building and the road. He submitted that the Municipal Corporation has no authority to permit the construction of the structure in the open space of the society. A careful perusal of the photograph shows that appellant no.1 society has partially erected a compound wall in front of the building no. 24. Compound wall appears to be non-continuous and there are several breaks in the compound wall for entering the open space leading to the shops situated on the ground floor. There is some open space between building no.24 and the compound wall and after the compound wall there is some rubbish and some cars are seen parked on the road partly covering the rubbish. Admittedly the appellant society has been formed by the members who themselves were hutment dwellers and were illegal occupants of the government land. They have been allotted tenements

free of cost and appear to be beneficiaries of the PMG Project for rehabilitation of slum dwellers. Respondent nos. 2 to 4 also claim to be entitled to benefits under the said scheme. However, the appellant no.1 society and its members having themselves got the benefit appear to be interested to see that the other hutment dwellers whose huts were also demolished do not get the benefit under the PMG Project. The land in front of building no.24 has not been allotted to appellant no.1 Even there is no mention in the plaint that the appellant no.1 owns the land on which the building no.24 is constructed nor is there any mention that the open space between building no.24 and the road belongs to appellant no.1 society. Members of the appellant no.1 society are mere allottees to whom the tenements have been allotted without any consideration by the government, as a measure of social obligation. If so, they have no right to prevent the government from allotting or allotting to anybody else, including respondent nos. 2 to 4 the open land between the road and the building for shifting their huts. If the huts of respondent nos. 2 to 4 have also been demolished the appellant no.1 cannot prevent respondent nos. 2 to 4 from claiming the benefit under the PMG Scheme. In fact respondent nos. 2 to 4 are not claiming free allotment but they have only been permitted by the respondent no.1 to shift their structures at their own costs. Their structures have been demolished by the respondent no.1 Mumbai Municipal

Corporation. In the circumstances the appellants are not entitled to an interim injunction restraining the respondents from carrying out the construction. For these reasons there is no merit in the appeal which is hereby dismissed.

7. Learned counsel for the appellants applies for stay of this order and prays that the interim order previously passed by this court be continued for some time to enable them to challenge this order. Accordingly at the request of the learned counsel for the appellants interim order passed by this court shall continue to remain in force for a period of 6 weeks.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application no. 1273 of 2004
in
A. O. NO. 929 OF 2004

Vijay Nagar Vijay
Coop. Hsg. Society Ltd. & anr. ... Appellant
VS.
Municipal Corporation of
Gr. Bombay & anr. ... Respondents

Mr. A. C. Singh for the appellant.
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

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P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)